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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,184	04/16/2004	Jonathan R. Adams	1444-2	8289
23117 7590 07/16/2007 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER CHAMBERS, MICHAEL S	
			ART UNIT	PAPER NUMBER
			3711	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/825,184  
Filing Date: April 16, 2004  
Appellant(s): ADAMS ET AL.

**MAILED**  
**JUL 16 2007**  
**GROUP 3700**

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Michael J. Shea  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed April 4, 2007 appealing from the  
Office action mailed June 16, 2006

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**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The amendment filed September 13, 2006 did not modify any claims. It requested reconsideration of the submitted claims.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

US 5935026 A – Dill et al --Lacrosse stick and head frame therefor issued August 10, 1999

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Dill et al (5935026). Dill discloses a lacrosse head/shaft that is capable of being length adjusted (fig 4, 5:11-20). In as much method and structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired. The method claimed would naturally be used by one using the device.

As to claim 2: See claim 1 rejection.

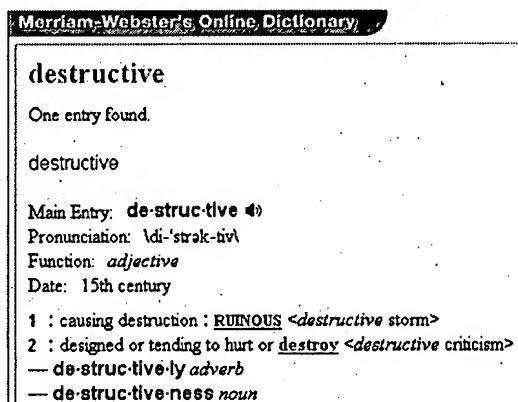
Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dill. The desire to adjust the length of the lacrosse head is dependent on the player. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the method of adjusting the length of the lacrosse head one or more times during a game based on the desires and ability of each lacrosse player.

As to claim 11: See claim 10 rejection.

#### **(10) Response to Argument**

The applicant has made the argument that Dill destructively adjusts the length of a lacrosse stick. Since the instant application provides no explanation of destructively adjusting the length of a lacrosse stick, one of ordinary skill in the art should look to a common dictionary for a clear explanation.

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Dill does not destructively alter the length of the lacrosse stick (Fig 4, 4:65-5:15). The insertion or removal of item 604 will inherently alter the length of the lacrosse stick. This meets the existing claim requirements. The physical location of where the insertion or removal change takes place is a matter of design choice since the application fails to disclose any surprising or unanticipated results from the adjustment location.

It should also be noted that claim 1 has so few limitations, it could be obviously rejected on the applicant's own admission in the existing brief. On page 7 of the brief the applicant states:

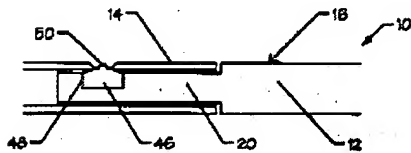
In addition, lacrosse sticks are sold in standard lengths. Often, players will "adjust" the length of the stick by cutting the sticks to a shorter length.

Claim 1 merely calls for the capability of intentionally adjusting the length of the lacrosse stick. It is the examiner's position that any lacrosse stick is **capable** of being adjusted on the playing field based on the applicant's admission in the brief.

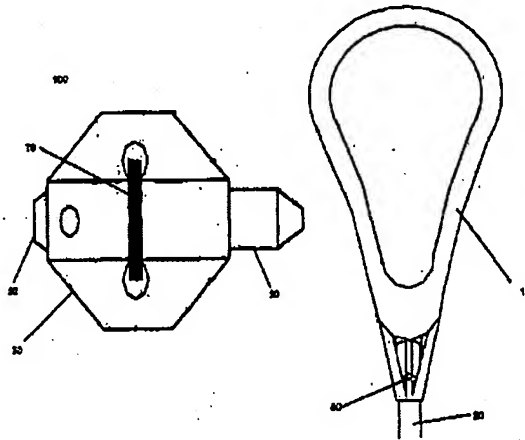
Claim 2 merely calls for the lacrosse stick to be **capable** of being adjusted without using any separate tools. Dill discloses that the player is provided with the "opportunity to utilize the offset segment in the handle or simply join the head to the straight section of the stick (5:12-14). While the applicant argues that Dill requires the use of a "screwdriver", the

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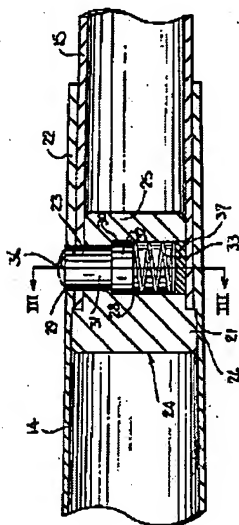
examiner does not agree with this assumption. The term "screwdriver" or "screw" is not found in the specification of Dill, therefore the applicant is reading into Dill a limitation that does not exist. The Dill sections fit together with coaxial fixation means (3:55-60). The coaxial fixation means while not clearly defined in Dill are considered by the examiner to be any well known means of attachment including, frictional fit means, or mechanical means. Examples of well known no tool mechanical devices are shown by the following examples:



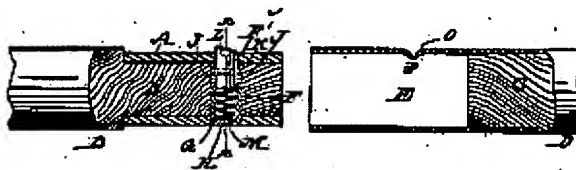
Post (6,565,280)



Enos et al (6,949,037)



McMullin (2,980,456)



Spear (389,335)

It would have been naturally obvious to one of ordinary skill in the art the time of the invention to have adjusted the length of the lacrosse handle at least once during the game based on the ability and desires of the player. If during play, the player desired a shorter lacrosse handle to give the player better control of the stick, insert (604) can be removed without tools. If it is a friction fit, the player merely removes the insert and re-assembles the lacrosse stick/head. If the stick utilizes any one of several well-known attachment means, the player would depress the pin holding the head, remove the insert (604) and re-assemble the apparatus. The method claimed would follow naturally.

Claim 10 merely adds the limitation that the length adjustment takes place on the playing field during the playing the game. If the device is adjustable, one of ordinary skill in the art would be motivated to adjust the length of the device during the game if they believed this would improve their use of the device. The method claimed would follow naturally.

Claim 11 merely adds the limitation that no tools be used when the adjustment is made. If the device is manually adjustable as noted above, one of ordinary skill in the art would be motivated to adjust the length of the device during the game if they believed this would improve their use of the device. The method claimed would follow naturally.

In the CAFC decision on *Sovish*, the court took some pains to note what one of ordinary skill in the art would be aware of.

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In re Sovish, Moisson, and Selleslags (CAFC 226 USPQ 771 July 26, 1985, 85-781) the court found the argument that the propriety of combining references was proper for one skilled in the art:

This argument presumes stupidity rather than skill.

The decision of the board is affirmed

One of ordinary skill in the art at the time of the invention would naturally use the method claimed when adjusting the lacrosse head during play. The methods claimed are not novel and have no patentable features.

To recap the facts of the case for the instant method:

Claims 1 and 2 merely call for a player utilizing a lacrosse stick/head to be capable of adjusting the length of the lacrosse head. As noted above, the device of Dill is capable of having its length adjusted by taking out section (604).

Claims 10 and 11 merely call for a player utilizing a lacrosse stick/head to play the game of lacrosse and at least once during play, to adjust the length of the lacrosse device. As noted above, the device of Dill is capable of having its length adjusted by taking out section 604. If the player was uncomfortable with the device having a longer handle, they could remove section (604) without any tools.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.



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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




Michael Chambers

Conferees



Eugene Kim



Marc Jimenez

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